

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SPRINGFIELD DIVISION

RUSSELL MARKS,)

v.)

UNITED STATES DEPARTMENT OF JUSTICE.)

13-3380-CV-S-BP

ORIGINAL COMPLAINT

Introduction

1. This is a Freedom of Information Act (“FOIA”) suit for records requested from the Executive Office for United States Attorneys (“EOUSA”), a component of the United States Department of Justice. EOUSA has responded to Plaintiff Russell Marks’ (“Marks”) FOIA request, but did not perform a reasonably adequate search for the records. Accordingly, Marks seeks an order compelling the Defendant to perform another search for the records, and to produce what is found as a result of the search. 5 U.S.C. § 552.

Parties

2. Plaintiff Russell Marks is a federal prisoner who is currently incarcerated at North Branch Correctional Institution, 14100 McMullen Highway, SW, Cumberland, Maryland 21502. Mr. Marks’ inmate number is 402775.

3. Defendant United States Department of Justice (“DOJ”) is the “agency” within the meaning of FOIA responsible for the production of the records requested by Marks from EOUSA

Venue

4. Venue is proper in the Western District of Missouri as the requested records are being sought from the U.S. Attorney's Office for the Western District of Missouri through EOUSA.

Count One

5. On August 9, 2012, Marks submitted the following electronic FOIA request to EOUSA:

Based on discussions with unnamed Federal Bureau of Prisons (BOP) officials, Cynthia Hyde, an Assistant U.S. Attorney (AUSA) in the Western District of Missouri, testified under oath on February 28, 2000, before the Honorable Ortrie D. Smith, United States District Judge for the Western District of Missouri, that she "did not talk to any individual [at United States Penitentiary (USP) Leavenworth] who felt that anybody was actually going to escape or that what Mr. Marks had provided to the government was substantial." See Docket Entry 302 at 28, *United States v. Russell Bradley Marks*, No. 1-03272-01-CR-W-3 (W.D. Mo). This testimony by AUSA Hyde was in reference to information that Mr. Marks provided to AUSA Hyde through his counsel, Mr. Clifford J. Barnard, concerning a conspiracy to escape from USP Leavenworth, attempted escape from same, and possession of escape paraphernalia, all involving former inmate Kevin Rawls.

In accordance with the provisions of the Freedom of Information Act, 5 U.S.C. 552, I request that I be provided with copies of all documents, notes, and other records from the U.S. Attorney's Office for the Western District of Missouri that reflect:

- (1) The name or names of all BOP officials AUSA Hyde spoke to in reference to the foregoing, including the dates for each such contact, and the title or rank of each such BOP official;
- (2) All other notes, documents, and records related to AUSA Hyde's discussions with BOP officials concerning the foregoing.

6. In response to Marks' request, EOUSA produced some records, but none regarding information purportedly provided to AUSA Hyde by USP Leavenworth officials indicating:

- (a) Rawls was not attempting to escape, but rather trying to make wine;
- (b) the key Rawls was found in possession of could not be used to effectuate an escape attempt;
- (c) anytime an inmate is caught with a key at USP Leavenworth, they are charged with escape;
- (d) no Federal Bureau of Prisons official considered Marks' cooperation in relation to the Rawls escape attempt to be substantial; and
- (e) the dates officials at USP Leavenworth were contacted.

Relief Requested

7. In addition to the relief specially requested above, Marks respectfully requests that he be afforded his costs, attorney's fees, and such other relief the Court may deem appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Russell Marks", with a long, sweeping horizontal stroke extending to the right.

Russell Marks # 402775

NBCI

14100 McMullen Highway, SW
Cumberland, Maryland 21502